

2010 -- S 2353 SUBSTITUTE A AS AMENDED

LC01237/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO HEALTH AND SAFETY - MERCURY REDUCTION AND EDUCATION
ACT

Introduced By: Senators Ruggerio, Sosnowski, Jabour, Felag, and Miller

Date Introduced: February 11, 2010

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

SECTION 1. Sections 23-24.9-2, 23-24.9-3, 23-24.9-6, 23-24.9-9 and 23-24.9-10 of the General Laws in Chapter 23-24.9 entitled "Mercury Reduction and Education Act" are hereby amended to read as follows:

23-24.9-2. Findings. -- The general assembly has found and hereby declares that:

(1) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment;

(2) Mercury deposition has proven to be a significant problem in the northeastern United States;

(3) Consumption of mercury-contaminated freshwater fish poses a significant public health threat to the residents of Rhode Island;

(4) In order to address these real threats to public health and the environment, the state has been and should continue to actively cooperate with other states in the region to help minimize harm resulting from mercury in food, soil, air and water; ~~and~~

(5) According to a 2004 study by the U.S. environmental protection agency titled "International mercury market study and the role and impact of U.S. environmental policy," more than ten percent (10%) of the estimated mercury reservoir in the United States is in thermostats;

(6) In 1998, thermostat manufacturers, General Electric, Honeywell, and White Rodgers established the thermostat recycling corporation "(TRC)", a non-profit corporation to facilitate recycling of mercury thermostats nationwide. The TRC originally operated solely through

wholesalers but has since expanded to enable collection by contractors, household hazardous waste facilities, and retailers. The TRC is a voluntary program in all states, but several states require wholesalers to act as collection points for waste mercury thermostats. Participation in the TRC is likely the simplest, least-cost means of complying.

(7) The manufacturers of mercury-containing thermostats, with the cooperation of the department, should be encouraged to submit a single unified plan for the collection of mercury-containing thermostats, the cost of which should be appropriately apportioned between participating manufacturer; and

~~(5)~~ (8) The intent of this chapter is to achieve significant reductions in environmental mercury by encouraging the establishment of effective waste reduction, recycling, management and education programs.

23-24.9-3. Definitions. -- For the purpose of this chapter:

(1) "Component" means a mercury-added product which is incorporated into another product to form a fabricated mercury-added product, including, but not limited to, electrical switches and lamps.

(2) "Department" means the department of environmental management.

(3) "Director" means the director of the department of environmental management or any subordinate or subordinates to whom the director has delegated the powers and duties vested in him or her by this chapter.

(4) "Fabricated mercury-added product" means a product that consists of a combination of individual components that combine to make a single unit, including, but not limited to, mercury-added measuring devices, lamps and switches to which mercury or a mercury compound is intentionally added in order to provide a specific characteristic, appearance, or quality, or to perform a specific function or for any other reason.

(5) "Formulated mercury-added product" means a product that includes, but is not limited to, laboratory chemicals, cleaning products, cosmetics, pharmaceuticals and coating materials that are sold as a consistent mixture of chemicals to which mercury or a mercury compound is intentionally added in order to provide a specific characteristic, appearance, or quality, or to perform a specific function or for any other reason.

(6) "Healthcare facility" means any hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office or health maintenance organization.

(7) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture that produces a mercury-added

1 product or an importer or domestic distributor of a mercury-added product produced in a foreign
2 country. In the case of a multi-component mercury-added product, the manufacturer is the last
3 manufacturer to produce or assemble the product. If the multi-component product is produced in
4 a foreign country, the manufacturer is the importer or domestic distributor. In the case of
5 mercury-containing thermostats, the manufacturer is the original equipment manufacturer who
6 sells or sold a mercury-containing thermostat under a brand or label it owns, or is or was licensed
7 to use a mercury-containing thermostat produced by other suppliers.

8 (8) "Mercury-added button cell battery" means a button cell battery to which the
9 manufacturer intentionally introduces mercury for the operation of the battery.

10 (9) "Mercury-added novelty" means a mercury-added product intended mainly for
11 personal or household enjoyment or adornment. Mercury-added novelties include, but are not
12 limited to, items intended for use as figurines, adornments, toys, games, cards, ornaments, yard
13 statues and figures, candles, jewelry, holiday decorations, items of apparel (including footwear),
14 or similar products.

15 (10) "Mercury-added product" means a product, commodity, chemical or a product with
16 a component that contains mercury or a mercury compound intentionally added to the product,
17 commodity, chemical or component in order to provide a specific characteristic, appearance, or
18 quality, or to perform a specific function or for any other reason. These products include
19 formulated mercury-added products and fabricated mercury-added products.

20 (11) "Mercury fever thermometer" means a mercury-added product that is used for
21 measuring body temperature.

22 (12) "Mercury-containing thermostat" means a product or device that uses a mercury
23 switch to sense and control room temperature through communication with heating, ventilating,
24 or air-conditions equipment. "Mercury-containing thermostat" includes thermostats used to sense
25 and control room temperature in residential, commercial, industrial, and other buildings, but does
26 not include a thermostat used to sense and control temperature as part of a manufacturing process.

27 (13) "Person" means an individual, trust, firm, joint stock company, corporation
28 (including a government corporation), partnership, association, the federal government or any
29 agency or subdivision thereof, a state, municipality, commission, political subdivision of a state,
30 or any interstate body.

31 (14) "Thermostat retailer" means a person who sells thermostats of any kind directly to
32 homeowners or other nonprofessionals through any selling or distribution mechanism, including,
33 but not limited to, sales using the internet or catalogues. A retailer may also be a wholesaler if it
34 meets the definition of wholesaler.

1 (15) "Thermostat wholesaler" means a person that is engaged in the distribution and
2 wholesale sale of thermostats and other heating, ventilation, and air-conditioning components to
3 contractors who install heating, ventilation, and air-conditioning components.

4 (16) "Contractor" means a person engaged in the business of installation, service, or
5 removal of heating, ventilation, and air-conditioning components.

6 (17) "Qualified contractor" means a person engaged in the business of installation,
7 service, or removal of heating, ventilation, and air-conditioning components who employs seven
8 (7) or more service technicians or installers or who is located in an area outside of an urban area,
9 as defined by the United States bureau of the census.

10 (18) "Local government collections" means collections completed by household
11 hazardous waste facilities, solid waste management agencies, environmental management
12 agencies, or the department of health.

13 **23-24.9-6. Restrictions on the sale of certain mercury-added products. --** (a) No later
14 than January 1, 2003, no mercury-added novelty shall be offered for final sale or use or
15 distributed for promotional purposes in Rhode Island. Manufacturers that produce and sell
16 mercury-added novelties must notify retailers about the provisions of this product ban and how to
17 dispose of the remaining inventory properly. The requirements of this section shall apply to all
18 mercury-added novelties irrespective of whether or not the product is exempt from the phase-out
19 requirements of section 23-24.9-11.

20 (b) No mercury fever thermometer may be distributed, sold or offered for sale in this
21 state on or after January 1, 2002, except by prescription. As used in this section, the term
22 "mercury fever thermometer" includes any device containing mercury in which the mercury is
23 used to measure the internal body temperature of a person. This restriction shall not apply to
24 digital thermometers utilizing mercury-added button cell batteries. The manufacturers of mercury
25 fever thermometers shall supply clear instructions on the careful handling of the thermometer to
26 avoid breakage and proper cleanup should a breakage occur with all mercury fever thermometers
27 sold through prescription. Mercury fever thermometers manufacturers must also comply with
28 sections 23-24.9-5 and 23-24.9-7 -- 23-24.9-10.

29 (c) After January 1, 2003, no school in Rhode Island may use or purchase for use in a
30 primary or secondary classroom, bulk elemental or chemical mercury, or mercury compounds.
31 Manufacturers that produce and sell such materials must notify retailers about the provisions of
32 this ban and how to dispose of the remaining inventory properly. Other mercury-added products
33 that are used by schools are not subject to this prohibition.

34 (d) Button cell batteries. - After June 30, 2011 a person may not sell or offer to sell or

1 distribute for promotional purposes a mercury-added cell battery for consumer use or a product
2 for consumer use that contains a mercury-added button cell battery.

3 (e) Commencing February 1, 2011, the following sales prohibitions shall apply to
4 manufacturers, thermostat wholesalers, and thermostat retailers:

5 (1) A manufacturer not in compliance with section 23-24.9-10.2, is prohibited from
6 offering any thermostat for final sale in the state, selling any thermostat at final sale in the state or
7 distributing any thermostat in the state.

8 (2) A thermostat wholesaler or contractor shall not offer for final sale, sell at final sale or
9 distribute any thermostat unless the wholesaler or contractor acts as a collection site for
10 thermostats that contain mercury:

11 (i) A wholesaler or contractor may meet the requirements of this subsection by
12 participating as a collection site in a manufacturer's collection program as described under
13 section 23-24.9-10.2, or by collecting thermostats that contain mercury and managing the
14 collected thermostats in accordance with applicable federal and state universal waste rules.

15 (ii) A wholesaler or retailer acting as a collection site shall provide visible signage at the
16 site about the collection and recycling of mercury thermostats.

17 (3) A thermostat wholesaler or thermostat retailer shall not offer for final sale, sell at a
18 final sale, or distribute in this state any thermostat of a manufacturer that is not in compliance
19 with section 23-24.9-10.2.

20 **23-24.9-9. Disposal ban.** -- (a) Except as otherwise provided for in this chapter, after
21 July 1, 2006, no person shall dispose of mercury-added products in a manner other than by
22 recycling or disposal as hazardous waste. Mercury from mercury-added products may not be
23 discharged to water, wastewater treatment, and wastewater disposal systems except when it is
24 done in compliance with local, state, and federal applicable requirements.

25 (b) If a formulated mercury-added product is a cosmetic or pharmaceutical product
26 subject to the regulatory requirements relating to mercury of the federal Food and Drug
27 Administration, then the product is exempt from the requirements of this section.

28 (c) This section shall not apply to: (1) anyone who disposes of a mercury-added button
29 cell battery; or (2) mercury-added components as contained in motor vehicles except as provided
30 in subdivision 23-24.9-10(b)(2) and in accordance with such regulations as may be adopted by
31 the department in order to achieve the purposes of subdivision 23-24.9-10(b)(2); and (3)
32 households disposing of lamps and products containing lamps.

33 (d) The restrictions on the disposal of mercury-added components in motor vehicles shall
34 be as set forth in subsection (a) of this section effective January 1, 2006, and shall be

implemented as provided for in subdivision (c)(2) of this section and subdivision 23-24.9-10(b)(2).

(e) The restrictions on amalgam waste recycling and disposal shall be implemented as provided for in section 23-24.9-9.3.

(f) Any contractor who replaces a mercury-containing thermostat from a building shall recycle the thermostat using its own collection container provided by thermostat manufacturers, or deliver the mercury-containing thermostat to an appropriate wholesaler, retailer or local government collection for recycling.

(g) Any contractor who demolishes a building shall remove any mercury-containing thermostats from the building prior to demolition and shall deliver the mercury-containing thermostats to an appropriate wholesaler, retailer or collection location for recycling.

(h) Any person who replaces a mercury-containing thermostat from any location in the state that is participating in an energy efficiency and/or weatherization program supported or administered in whole or in part by any department, agency, instrumentality, or political subdivision of the state or conducted as a result of any statutory requirement, including but not limited to, demand-side management pursuant to section 39-2-1.2, or least-cost procurement pursuant to section 39-1-27.7, shall deliver the mercury-containing thermostats to an appropriate wholesaler, retailer or collection location for recycling.

23-24.9-10. Collection of mercury-added products. – (a) After January 1, 2006, no mercury-added product shall be offered for final sale or use or distribution for promotional purposes in Rhode Island unless the manufacturer, either on its own or in concert with other persons, has implemented a system, after review and approval of the director, for the convenient and accessible collection of such products when the consumer is finished with them. Where a mercury-added product is a component of another product, the collection system must provide for removal and collection of the mercury-added component or collection of both the mercury-added component and the product containing it. Mercury-added components in motor vehicles shall be collected and recycled as provided for in subdivision (b)(2) of this section. Mercury-containing thermostats shall be collected and recycled as provided for in section 23-24.9-10.2.

(b) (1) This section shall not apply to the collection of mercury-added button cell batteries or mercury-added lamps or products where the only mercury contained in the product comes from a mercury-added button cell battery or a mercury-added lamp; and

(2) Mercury-added components in motor vehicles at end-of-life shall be collected and recycled as provided in this subsection. Significant, willful failure to comply with rules and/or regulations to implement the provisions of this section shall constitute, as may be determined by

1 the department, a violation of the ban established in section 23-24.9-9. No scrap recycling facility
2 or other person that receives a flattened, crushed or baled end-of-life vehicle shall be deemed to
3 be in violation of subdivision 23-24.9-10(b)(2) and rules and regulations pursuant thereto or
4 section 23-24.9-9 if a mercury switch is found in the vehicle after its acquisition.

5 For the purposes of subdivision 23-24.9-10(b)(2) the following terms shall have the
6 following meanings: (i) "Capture rate" means the annual removal, collection, and recovery of
7 mercury switches, as a percentage of the total number of mercury switches available for removal
8 from end-of-life vehicles as determined by the department of environmental management.
9 Capture rate shall not include mercury switches that are inaccessible due to significant damage to
10 the motor vehicle in the area where the mercury switch is located; (ii) "Mercury added
11 component" or "Mercury switch" means a mercury-added convenience light switch assembly or
12 capsule from an end-of-life motor vehicle; (iii) "Scrap recycling facility" means a fixed location
13 where machinery and equipment are utilized for processing and manufacturing scrap metal into
14 prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic
15 scrap for sale for remelting purposes; and (iv) "Vehicle recycler" means an individual or entity
16 licensed under the provisions of section 42-14.2-3 that engages in the business of acquiring,
17 dismantling, parts recycling from, or destroying six (6) or more end-of-life vehicles in a calendar
18 year.

19 (A) Manufacturers of motor vehicles sold in Rhode Island that contain mercury switches
20 shall, individually or collectively, establish and implement a collection program for mercury
21 switches to achieve a capture rate of not less than fifty percent (50%) for calendar year 2006, and
22 not less than seventy percent (70%) for calendar year 2007 and each calendar year thereafter
23 through calendar year 2017.

24 (B) The department shall develop, issue, administer and enforce regulation compelling
25 the manufacturers of motor vehicles sold in Rhode Island that contain mercury switches to
26 undertake a collection program as set forth in this subparagraph, 23-24.9-10(b)(2)(B). The
27 department shall determine that the capture rate in each year of the program and shall assess
28 whether any failure to achieve the capture rate was the result of a force-majeure. The department
29 shall report publicly on or before March 31, each year its findings with regard to the capture rate
30 during the prior year. The manufacturer or manufacturers shall pay the total cost of the removal,
31 replacement, collection and recovery system for mercury switches, under this subparagraph, 23-
32 24.9-10(b)(2)(B), to the vehicle recycler or scrap recycling facility that removed the switch. The
33 total cost shall include, but not be limited to a minimum of five dollars (\$5.00) for each mercury
34 switch removed by a vehicle recycler or by a scrap recycling facility, as partial compensation for

1 the labor and other costs incurred in the removal of the mercury switch.

2 (3) The provisions of subdivision 23-24.9-10(b)(2) shall satisfy collection programs and
3 disposal requirements for mercury switches for all motor vehicles sold in the state.

4 SECTION 2. Chapter 23-24.9 of the General Laws entitled "Mercury Reduction and
5 Education Act" is hereby amended by adding thereto the following sections:

6 **23-24.9-10.2. Mercury-containing thermostats. – (a) Manufacturer responsibility. Each**
7 **thermostat manufacturer that has offered for final sale, sold at final sale, or has distributed**
8 **mercury-containing thermostats in Rhode Island shall, individually or collectively:**

9 (1) No later than November 1, 2010, submit a detailed description of a collection program
10 for mercury thermostats that meets the requirements of this section to the department. The
11 department shall have thirty (30) days from the date of submittal to review and provide comment
12 on the program. The final program description shall be submitted to the department no later than
13 December 31, 2010.

14 (2) On or after January 1, 2011, make collection containers available to all qualified
15 contractors, thermostat wholesalers, thermostat retailers, and local government collections in this
16 state that request a container. Each thermostat manufacturer shall with each container include
17 information regarding the proper management of mercury containing thermostats as universal
18 waste in accordance with the collection program and the department's rules.

19 (3) Establish a system to collect, transport, and properly manage out-of-service mercury
20 thermostats from all collection sites established under this section.

21 (4) Not include any fees or other charges to persons participating in the program, except
22 that each thermostat wholesaler, qualified contractor, local government collection, or thermostat
23 retailer that is provided with one or more collection containers may be charged a one-time
24 program administration fee not to exceed seventy-five dollars (\$75.00) per collection container.

25 (5) From January 1, 2011, through December 31, 2014 conduct education and outreach
26 efforts including, but not limited to: (i) Promoting the availability of collection containers to
27 qualified contractors, wholesalers, thermostat retailers, and units of local government in this state:
28 (ii) Educating contractors, homeowners and other interested persons on the importance of
29 properly managing out-of-service mercury thermostats and opportunities for the collection of
30 those thermostats and the availability of manufacturer supported program(s): (iii) Providing
31 signage to participating collection locations that can be prominently displayed to promote the
32 collection and recycling of out-of-service mercury thermostats to contractors and consumers; and
33 (iv) Written materials or templates of materials for reproduction by participating wholesalers and
34 thermostat retailers to be provided to customers at the time of purchase or delivery of a

1 thermostat. These materials shall include, but not limited to, information on the importance of
2 properly managing out-of-service mercury thermostats and opportunities for the collection of
3 those thermostats.

4 (6) For calendar year 2011, collect at least two thousand (2000) mercury thermostats
5 taken out-of-service in the state during the calendar year. For calendar year 2012, the goal shall
6 be to collect at least two thousand two hundred fifty (2,250) mercury thermostats. For calendar
7 year 2013 and 2014, the goal shall be to collect at least two thousand five hundred (2,500)
8 mercury thermostats taken out-of-service in the state during each calendar year.

9 (7) Beginning in 2012, submit an annual report to the department by March 1, of each
10 year that includes, at a minimum, all of the following:

11 (i) The number of mercury-containing thermostats collected and recycled by that
12 manufacturer pursuant to this section during the previous calendar year;

13 (ii) The estimated total amount of mercury contained in the thermostat components
14 collected by that manufacturer pursuant to this section in the previous calendar year;

15 (iii) An elevation of the effectiveness of the manufacturer's collection program;

16 (iv) An accounting of the administrative costs incurred in the course of administering the
17 collection and recycling program; and

18 (v) A list of locations that participate as collection sites.

19 (b) Department responsibilities.

20 (1) Collection points. The department shall maintain and post on their website a list of
21 units of local government, thermostat retailers and any other locations that are collection points
22 for mercury thermostats.

23 (2) Education outreach. In conjunction with the educational and outreach programs
24 implemented by manufacturers, the department shall conduct an education and outreach program
25 directed toward wholesalers, retailers, contractors, and homeowners to promote the collection of
26 out-of-service mercury-containing thermostats.

27 (3) Rate of collection. For calendar year 2015 through 2020, the collection goals shall be
28 established by the department. The department shall establish collection goals no later than
29 November 1, 2014. In developing collection goals, the department shall take into account, at a
30 minimum: (i) The effectiveness of collection programs for out-of-service mercury thermostats in
31 the state and other states; (ii) Collection requirements in other states; (iii) Any reports or studies
32 on the number of out-of-service mercury thermostats that are available for collection in this state,
33 other states, and nationally; and (iv) Other factors. Prior to establishing the collection goals, the
34 department shall consult with stakeholder groups that include, at minimum, representatives of

1 thermostat manufacturers, environmental groups, thermostat wholesalers, contractors, and
2 thermostat retailers.

3 (4) Modifications to collection programs. Modifications required by the department may
4 include, but not be limited to, improvements to outreach and education conducted under the
5 collection program, expansion of the number of collections sites established under the program,
6 and modification of the roles of participants. Modifications that may include a five dollar (\$5)
7 incentive in the form of either cash or a coupon offered by the manufacturer to contractors and
8 consumers for each out-of-service mercury thermostat returned to a collection site may not be
9 considered prior to January 1, 2014. In the event that the department determines that a program
10 shall be modified, the department shall consult with thermostat manufacturers, thermostat
11 wholesalers, thermostat retailers, service contractors, environmental groups and municipalities to
12 develop the revisions to the program. If the program is modified to include a financial incentive,
13 the department may exempt local government collections from the financial incentive provision.
14 Any modifications made to the collection program shall be subject to the provisions of chapter
15 42-35, ("The Administrative Procedures Act").

16 **23-24.9-10.3. Sunset provisions.** – The department shall review the provisions of section
17 23-24.9-10.2 no later than September 1, 2019 to determine if the provisions of said section shall
18 sunset and the appropriate date for such action or if the approved rates of collection should be
19 revised. The department shall make such a determination based on the best available data
20 pertaining to the remaining number of out-of-service mercury-containing thermostats and the
21 collection rates achieved under the provisions. The department shall report to the general
22 assembly no later than January 1, 2020 as to the determination made by the department. If the
23 department determines that the provisions of section 23-24.9-10.2 shall continue then the
24 department shall subsequently review the provisions of said section no later than September 1,
25 2022 and every two (2) years thereafter until such provisions are no longer required and the
26 department shall report such findings to the general assembly for purposes of repealing the
27 section.

28 SECTION 3. This act shall take effect upon passage, and would sunset under certain
29 circumstances.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY - MERCURY REDUCTION AND EDUCATION
ACT

- 1 This act would revise the mercury reduction and education act in order to require
2 thermostat manufacturers to submit plans for the collection and disposal of mercury thermostats.
3 This act would take effect upon passage, and would sunset under certain circumstances.

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2010 -- S 2353
SUBSTITUTE A

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RELATING TO HEALTH AND SAFETY - MERCURY REDUCTION AND EDUCATION ACT

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Presented by